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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

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315 U.S. 814

No. 899

PERRY L. DAVIS AND CLAUDE C. BLEDSOE,
Petitioners,

vs.

THE STATE OF IOWA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA AND BRIEF IN SUPPORT THEREOF.

C. N. JEPSON,
A. H. BOLTON,
H. C. HARPER,
CARLOS W. GOLTZ,
Counsel for Petitioners.

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THE STATE OF IOWA.

PETITION FOR A WRIT OF CERTIORARI.

To the Honorable Chief Justice and the Honorable Members of the Supreme Court of the United States, this petition is respectfully directed.

This is a petition for a review on writ of certiorari of a decision of the Supreme Court of Iowa (*State* v. *Davis, et al.*, 230 Iowa, 309, 297 N. W., 274).

The jurisdiction of this Honorable Court is sought under the provisions of Amendment Fourteen of the Constitution of the United States, which provides: "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The petitioners state that they have, in order to obtain justice, availed themselves of every proceeding known under

the law of Iowa, and were convicted upon false, paid, perjured testimony, which they can establish beyond any doubt.

They say and here state that their conviction, and the affirmation of the same, was without due process of law, because, among other reasons, the jury was coerced in bringing a verdict against them, all of which can be shown from the abstract of the record filed in the Supreme Court of Iowa, (copies of which have been sent to the Clerk of this Honorable Court) commencing on page 119 thereof, and further their civil rights were denied, as can be shown by lengthy affidavits showing that material witnesses against them perjured themselves.

Your petitioners also state that they were detective sergeants of the Sioux City, Iowa, police department, and, as far as they know, this is the first time that police officers have been sentenced to the penitentiary on the testimony of unlawful persons who should have been incarcerated, but, due to a graft and corruption ring, they became victims of it; that they arrested and succeeded in convicting more criminals than the remainder of their department during the period in which they were alleged to have committed a crime.

All they have asked for has been a fair hearing, which has been denied. They say if a hearing is allowed to them they will conclusively prove their innocence, and they were not given an opportunity to defend themselves, and the jury in the case was coerced, which can be shown, as they think, beyond question.

They state that they are persons who might enable themselves to present this writ *in forma pauperis* (*Lisenba* v. *California,* December 8, 1941), but are hopeful to obtain assistance from family relations, poor as they may be, and friends, sufficient to pay the filing fee, the printing, and other costs. Hours of dictation could be spent in endeavoring to elucidate facts and, as an explanation for making

these statements, the new rules seemingly require brevity and they would not have the money to pay for the preparation of the same.

The verdict against the petitioners was returned on April 11, 1940. The conviction of them was confirmed by the Supreme Court of Iowa on April 8, 1941 (*State* v. *Davis, et al.*, 230 Iowa 309, 297 N. W. 274). A petition for rehearing was overruled September 26, 1941.

WHEREFORE, the petitioners respectfully pray that a writ of certiorari may be issued out of and under the Seal of this Honorable Court, directed to the Supreme Court of Iowa, commanding said Court to certify and send to this Honorable Court, on a day certain to be therein designated, a full and complete transcript of records and all proceedings in the case entitled *State* v. *Davis, et al.*, 230 Iowa 309, 297 N. W. 274, to the end that said case may be reviewed and determined by this Honorable Court as provided by the Judicial Code and the Revised Rules, or that your petitioners may have such other and further relief or remedy in the premises as this Honorable Court may deem appropriate, and in conformity with the provisions of law, and that the judgment of the District Court of Woodbury County, Iowa, in this case, affirmed by the Supreme Court of Iowa, be reversed, and a new trial be ordered.

C. N. JEPSON,
A. H. BOLTON,
H. C. HARPER,
CARLOS W. GOLTZ,
Attorneys for Petitioners.

SUPREME COURT OF THE UNITED STATES

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THE STATE OF IOWA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

The opinion of the Supreme Court of Iowa, adverse to these petitioners, is found in 230 Iowa 309, 297 N. W. 274.

Jurisdiction.

Jurisdiction is sought under Amendment Fourteen, Section 1, to the Constitution of the United States.

Questions Presented.

We would like to try to prove that the petitioners in this case were convicted upon paid, perjured testimony, but, feeling that question is not a Federal one, we limit ourselves to only one proposition—Was the jury coerced in

returning a verdict against them in violation of the due process provision which is part of Amendment Fourteen?

We refer to the records sent by the Supreme Court of Iowa to this Court, and particularly to the appellants' (these petitioners) abstract of record. On page 119 thereof are the affidavits of Carrie Gillen and Alta Gillen, and on page 120 thereof is the testimony of George G. Yeaman, a lawyer who has been practicing for many years in Sioux City, who swore that he heard the conversation between the bailiff and the jury. He said that the bailiff asked the jury, "What do you want, have you agreed?" One of the jurors stated, "No, we have agreed to disagree, and I wish you would tell the Court * * *." The bailiff then said, "You can't do that. Go on back up and work. You will have to agree on a verdict or you will have to stay there until Saturday at least." The said lawyer stated to one of the judges of the District Court of Woodbury County, Iowa, "Judge, that is reversible error." (R. 120, 121.)

The testimony of Mr. Yeaman is corroborated by the witness, Blair C. McPherran, one of the jurors, who stated that the bailiff said, when he was called and told in effect that the jury could not agree, "You can't do that. Go on back and go to work. You have to reach a verdict or you will have to stay there over Saturday." This occurred on Thursday afternoon. (R. 121.)

A Mr. N. P. Lang, salesman for the Sioux City Journal, of Sioux City, Iowa, stated that he was present and heard the bailiff ask this question, "Have you reached a verdict?" and the response was, "We have agreed not to agree", and the bailiff said, "You can't do that; you will have to go back until you reach a verdict if it takes you four days * * *." He saw, as he states, the attorney, George G. Yeaman, walk over to one of the judges of the District Court of Woodbury County, Iowa, and heard him quote the oath

that the bailiff took to the effect that he would not communicate with the jurors except to ask them if they had agreed upon a verdict, and stated that was reversible error. (R. 121, 122.)

A. C. Hatt, an attorney at law, of Sioux City, Iowa, who has practiced there for more than a score of years, stated that on April 11, 1940, he was in the attorneys' room, in connection with the court room of one of the judges of the District Court of Woodbury County, Iowa, and heard a buzzer ring from the jury room upstairs; that the bailiff came and he heard statements made; that the bailiff said "Have you agreed on a verdict?" and, "You can't do that, go on back and go to work until Saturday," and Mr. Hatt told the judge about it. (R. 122, 123.)

Honorable D. C. Browning, one of the judges of the District Court of Woodbury County, Iowa, gave an affidavit that he heard the bailiff say to the jury, "That isn't any verdict. You will have to agree. Go on back and go to work * * *." (R. 123.)

W. C. Gray, a court reporter in the Woodbury County Iowa District Court, swore that he heard someone say, "Have you agreed upon a verdict?", and the answer was, "We have agreed to disagree." (R. 123, 124.)

A Mr. Joseph A. Guttelman stated that on the date, April 11, 1940, he was in the attorneys' room and heard the bailiff say to the jury, "What do you want? Have you agreed?", and that the response was, "We have agreed to disagree. I wish you would tell the Court." (R. 124.)

These petitioners filed a motion for a new trial, elaborating the facts more in detail than are set forth herein, which was resisted by the prosecution, and in its resistance was set out the affidavit of the bailiff, which is shown on page 126 of the abstract, in which he, the bailiff, whom we accuse of coercing the jury, in conversation with the foreman, or

acting foreman, the latter person stating, "We have taken our final ballot", then said, "That's fine. Have you signed a verdict?" The answer was, "No we haven't signed the verdict. We have simply voted that we cannot get together." This bailiff, whom we accuse of coercing the jury, then made statements, according to his own affidavit, "Nothing doing. You can't do that. Go back and go to work on it some more." The foreman, or acting foreman, according to the affidavit of the bailiff, whom we are charging with violating his duties, then said, "We have voted and cannot get together, and they say they will not change their verdict. How long will we have to stay up here?" and the bailiff said, "I don't know." (R. 126.)

May it please this Honorable Court, we refer to the Northwestern Reporter, volume 297, page 274, at 275, in which it might seem that there was a question of fact regarding whether or not the jury was coerced in this case. In our opinion, conclusion and belief, it is thought by us there was not even any doubt about that, as shown by the record, which proves, as we contend, there was a denial of due process of law.

We further contend the affidavit of the bailiff, himself, is conclusive that he coerced the jury (R. 126.)

These petitioners were indicted and went to trial on Monday, April 1, 1940 (R. 28). It was the second Thursday afterwards that the bailiff coerced the jury, as we allege.

We contend that the petitioners were denied due process of law, the equal protection of the law, and upon reasoning demonstrably erroneous, which is shown by the record, and we cite as authority the case of *Powell* v. *Alabama,* 287 U. S. 45, 77 L. Ed., 158.

It is our wish that we could submit the evidence of the paid, perjured testimony along with the argument made.

Conclusion.

We may not clearly understand the Revised Rules but have tried hard to comply with them.

Respectfully submitted,

C. N. JEPSON,
A. H. BOLTON,
H. C. HARPER,
CARLOS W. GOLTZ,
Attorneys for Petitioners.

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IN THE

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OCTOBER TERM, 1941.

No. 899.

PERRY L. DAVIS and CLAUDE C. BLEDSOE,
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vs.

STATE OF IOWA,
Respondent.

BRIEF IN BEHALF OF STATE OF IOWA, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JOHN M. RANKIN, Attorney General of Iowa,
JENS GROTHE, Assistant Attorney General of Iowa,
Attorneys for State of Iowa, Respondent.

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Yosemite Gold Min., etc., Company v. *Emerson*, 208 U. S. 25; 28 S. Ct. 196; 52 L. ed. 374.

Risley v. *Utica*, 179 Federal 875.

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VS.

STATE OF IOWA,
Respondent.

BRIEF IN BEHALF OF STATE OF IOWA, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

Petitioners, Perry L. Davis and Claude C. Bledsoe, were found guilty of the crime of conspiracy by a jury in the District Court[1] of Woodbury County, Iowa. An appeal was perfected to the Supreme Court of Iowa, which on the 8th day of April, 1941, affirmed the decision of the lower court. Subsequently and within the time required by law petition for rehearing was filed by Petitioners. Resistance thereto was filed by the State and subsequently the same was fully argued to the Appellate Tribunal of this State which shortly

thereafter denied the same. The case is now pending in this Court upon petition for writ of certiorari.

Petitioners assign as their sole and only ground for relief the alleged misconduct of the bailiff in charge of the trial jury during its deliberations.

ARGUMENT.

RESPONDENT ASSERTS THAT THE RECORD FAILS TO IN ANY MANNER SHOW THAT THE BAILIFF WAS GUILTY OF MISCONDUCT. THE EVIDENCE WITH REFERENCE TO WHAT THE BAILIFF DID AND SAID WAS IN CONFLICT. THE DETERMINATION OF THIS QUESTION WAS FOR THE TRIAL COURT IN RULING UPON PETITIONERS' MOTION FOR A NEW TRIAL. SUCH RULING WAS, UPON SUCH CONFLICTING EVIDENCE, ADVERSE TO THESE PETITIONERS. THE APPELLATE TRIBUNAL FOUND AND DETERMINED THAT IN SO RULING UPON SAID QUESTION THE TRIAL COURT DID NOT ABUSE ITS DISCRETION. CLEARLY, THE ORDER OF THE TRIAL COURT OVERRULING THE MOTION FOR A NEW TRIAL ON THE GROUND OF THE ALLEGED MISCONDUCT OF THE BAILIFF AND THE AFFIRMANCE OF SUCH ORDER BY THE SUPREME COURT IS NOT A FEDERAL QUESTION AND THEREFORE THIS COURT HAS NO JURISDICTION TO HEAR AND DETERMINE THE ISSUES INVOLVED HEREIN.

Petitioners have failed to set out the complete record with reference to the alleged misconduct of the bailiff and we now undertake to supplement the same as follows:

We set out, first, in its entirety, the affidavit of the bailiff, Royal A. Smith:

> "I am bailiff to Judge A. O. Wakefield; William Leis is bailiff to Judge Munger; we were sworn and were in charge of the jury in the State of Iowa vs. Claude Bledsoe and Perry Davis. Leis and I took charge of the jury after the instructions were given and the jury began

deliberations about 10:30 A. M., April 10, 1940; the jury was out till 5:10 P. M., April 11, 1940. About 3 P. M., April 11, 1940, I received a signal from the jury room upstairs; went to the door and asked what was wanted. McPherran, the acting foreman, stated: 'We have taken our final ballot.' I said, 'That's fine. Have you signed the verdict?' He answered, 'No, we haven't signed the verdict. We have simply voted that we cannot get together.' I then said, 'Nothing doing. You can't do that. Go back and go to work on it some more.' He said, 'We have voted and cannot get together and they say they will not change their vote. How long will we have to stay up here?' I then said, 'I don't know. That is entirely up to the judge. You'll have to stay there until he excuses you.' He then said, 'Will you tell the judge?' I said, 'Sure.' I reported the matter to the court, received no order and returned to my place in charge of the jury. The jury did not complain of physical discomfort or mental ailment or handicap."

Louis Spillman testified:

"I was on the Bledsoe-Davis jury. The deliberations commenced at 10:30 A. M., April 10, 1940; at 3 P. M. on the 11th of April, 1940, the foreman called the bailiff. Royal Smith responded. He made no statement as to how long the jury would have to remain on the case; the two women were in their dormitory; the foreman sent in jurors one at a time to talk to them at their request until four or five had talked to them. At about 5 o'clock we arrived at the verdict and returned it into court. My verdict was not influenced by anything said or done by the bailiff but was based on evidence and instructions of the court."

George Card testified:

"I was on the Bledsoe-Davis jury. The substance of the talk between Royal Smith, bailiff and the foreman, when we were deliberating was that we had reached an agreement; the bailiff then asked if the verdict had been signed. He replied, 'No, we have agreed that we can't agree.' The bailiff said, 'No, you can't do that. You'll have to go back and work on it a while.' The bailiff told the foreman that he would tell the judge. He said

the time we would have to stay would depend upon the judge. My verdict was based on the evidence and the court's instructions."

Peter A. John testified:

"I was on the Davis-Bledsoe jury. I experienced no physical or mental fatigue or exhaustion in deliberating on this case. The verdict was based by me on evidence and the court's instructions."

We have not attempted to set out all of the affidavits filed by the State in resistance to petitioners' motion for new trial. We have, we believe, by the affidavits that we have set out, shown to this court that the bailiff did not in any manner misconduct himself.

It is true that the affidavits of petitioners, as to the conduct of the bailiff, is at variance to some extent with those of the affidavits filed by the State. However, it was for the court, who saw and heard the witnesses, to determine who told the truth. The trial court expressly found and determined that no misconduct which in any manner prejudiced the rights of the defendants had been committed by the bailiff. The Supreme Court of this State found that in so ruling the court did not abuse its discretion. Certainly the ruling of the Supreme Court on this disputed factual issue is not a federal question.

With reference to the assertion made by petitioners to the effect that they were convicted upon "paid perjured testimony" have to say that in our humble opinion, this is wholly unwarranted and that no basis exists therefor whatever.

The writer of this brief has examined some of the affidavits now in the possession of the petitioners' counsel. In some instances, these affidavits go no farther than to express an opinion that certain named witnesses who testified during petitioner's trial perjured themselves. We also state

professionally that in most instances such affidavits have been furnished by persons of low repute and bad character.

A representative from the Attorney General's office, namely one Horace Pike, assisted the County Attorney of Woodbury County at the trial of petitioners.

The writer of this brief states professionally without hesitation that Mr. Pike would not knowingly be a party to bring about the conviction of petitioners upon perjured testimony.

CONCLUSION.

1. It is our conclusion that the affidavits filed by petitioners, when considered together with the affidavits filed by the State, establish that Royal A. Smith, the bailiff was not guilty of misconduct.

2. The alleged misconduct of a bailiff who has a trial jury in charge in a criminal case, is not a federal question and, therefore, this court has no jurisdiction to hear and determine the issues involved herein.

3. If, as claimed by petitioners, they have been convicted upon perjured testimony, or if for any other reason have been deprived of a fair and impartial trial, recourse may be had by application to the executive authority of this state who has full power to suspend the sentence imposed by the court or to grant them a full pardon. It is to be presumed that if petitioners can make proper showing to the executive he will afford them the relief prayed.

We, therefore, respectfully request that petitioners' Petition for Writ of Certiorari be denied.

Respectfully submitted,

JOHN M. RANKIN, Attorney General of Iowa,
JENS GROTHE, Assistant Attorney General of Iowa,
Attorneys for State of Iowa, Respondent.